

AMENDED IN SENATE APRIL 18, 2005

SENATE BILL

No. 481

Introduced by Senator Chesbro

February 18, 2005

An act to ~~amend Section 4685.5 of~~ *add Section 4685.7 to* the Welfare and Institutions Code, relating to developmental services.

LEGISLATIVE COUNSEL'S DIGEST

SB 481, as amended, Chesbro. ~~Local self-determination programs.~~ *Self-Directed Services Program.*

Existing law, the Lanterman Developmental Disabilities Services Act, requires the State Department of Developmental Services to allocate funds to private nonprofit regional centers for the provision of community services and support for persons with developmental disabilities and their families, and sets forth the duties of the regional centers, including, but not limited to, development of individual program plans and the monitoring of services.

Existing law requires the department to conduct a pilot project ~~to under which funds are allocated for local self-determination pilot programs that will~~ enhance the ability of a consumer and his or her family to control the decisions and resources required to meet all or part of the objectives of his or her individual program plan. ~~The~~ *Existing* law requires the department to permit the continuation of the project in 5 regional centers, and expand it to others if certain conditions are met, including, but not limited to, consistency with federal waivers and no impact in the aggregate to the General Fund.

This bill would ~~recast those provisions and would, if federal waivers for expansions are not forthcoming, require expansion of the project as a state-only program if the project meets criteria established by the department and demonstrates purchase of services expenditures are~~

~~not increased in the aggregate~~ establish the Self-Directed Services Program, which would expand the self-determination pilot projects to every regional center catchment area, consistent with federal approval of a self-directed waiver, and provided the participants meet certain eligibility requirements. It would also require the department to develop, revise, and maintain regulations implementing these requirements, and would permit the adoption by the department of emergency regulations to implement these provisions.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 4685.7 is added to the Welfare and
2 Institutions Code, to read:

3 4685.7. (a) The self-determination projects described in
4 Section 4685.5 shall be expanded to every regional center
5 catchment area, consistent with federal approval of a
6 self-directed waiver, and the requirements set forth in this
7 section. In order to provide opportunities to participate in a
8 self-directed services program, the department shall adopt
9 regulations to implement the procedures in this section.

10 (b) For purposes of this section, the following definitions shall
11 apply:

12 (1) "Financial management services" means a service or
13 function that assists the family or individual to manage and
14 direct the distribution of funds contained in the individual
15 budget. This may include the facilitation of the employment of
16 service workers by the family or individual including federal,
17 state, and local tax withholding payments, unemployment
18 compensation fees, wage settlements, fiscal accounting, and
19 expenditure reports. Specific qualifications shall be established
20 by the department and required of a financial management
21 services provider.

22 (2) "Supports brokerage" means a service or function that
23 assists participating families and individuals make informed
24 decisions about the individual budget, locating, accessing and
25 coordinating services consistent with and reflecting his or her
26 individual needs and preferences. The service is available to
27 assist in identifying immediate and long-term needs, developing

1 options to meet those needs, and obtaining identified supports
2 and services.

3 (3) “Supports broker” means a person, selected and directed
4 by the participant, who facilitates communication between the
5 participant, the self-directed services program, and other service
6 providers, and provides necessary assistance to sustain the
7 participant in the SDS Program. The supports broker fulfills the
8 supports brokerage service or function and includes consultation
9 and assistance in the person-centered planning process. Specific
10 qualifications shall be established by the State Department of
11 Developmental Services and required of a supports broker
12 provider.

13 (4) “Waiver” means a waiver of federal law pursuant to
14 Section 1396n of Title 42 of the United States Code.

15 (5) “Independence Plus Self-Directed (IPSD) Waiver
16 Program” or “Self-Directed Waiver Program” means a federal
17 waiver to the state’s Medicaid plan that provides for a delivery of
18 services program that allows people with developmental
19 disabilities who need or require long-term supports and services,
20 and their families, greater opportunity to control his or her own
21 health by utilization of self-directed services.

22 (6) “Self-determination services,” “self-directed services” or
23 “SDS” means a delivery system of integrated and inclusive
24 services that enhance the ability of an individual or his or her
25 family, as appropriate, to control the decisions and resources
26 required to meet all or some of the objectives in his or her
27 individual program plan. Self-directed services shall include, but
28 are not limited to, home health aide services, habilitation
29 services for supported employment and prevocational services,
30 respite services, supports broker functions and services, financial
31 management services and functions, environmental accessibility
32 adaptations, skilled nursing, transportation, specialized medical
33 equipment and supplies, personal emergency response system,
34 integrative therapies, vehicle adaptations, communication
35 support, crises intervention, nutritional consultation, behavior
36 intervention services, specialized therapeutic services, family
37 assistance and support, housing access supports, community
38 living supports, advocacy services, individual training and
39 education, participant-directed goods and services, training and
40 education transition services. Any references to

1 “self-determination services” shall have the same meaning as
2 self-directed services.

3 (7) Advocacy services shall mean services and supports that
4 facilitate the participant in exercising his or her legal, civil and
5 service rights to gain access to generic services and benefits that
6 the participant is entitled to receive. Advocacy services shall only
7 be provided when other sources of similar assistance are not
8 available to the participant, and when advocacy is directed
9 towards obtaining generic services.

10 (8) “Individual budget” means the monetary value of services
11 available to the participant to support the individual’s individual
12 program plan. The individual budget is constructed using a fair,
13 equitable, and transparent methodology.

14 (9) “Risk pool” means an aggregate account comprised of a
15 portion of each participant’s yearly individual budget that is
16 allocated for use in addressing unanticipated needs.

17 (10) “Employer of record” refers to the individual, or legally
18 authorized representative, who controls what tasks self-directed
19 service providers will perform and how the tasks will be
20 performed. The term “employer of record” refers to the legal
21 employer of a worker.

22 (11) “Congregate setting” means an environment, including
23 living arrangements and service delivery settings, in a distinct
24 geographical area, the makeup of which is defined by the
25 presence of a majority of individuals with disabilities.

26 (12) “Participant” means an individual, and when
27 appropriate, his or her family, who are participating in the
28 Self-Directed Services Program.

29 (c) The Self-Directed Services Program is hereby established,
30 and shall be available in every regional center catchment area,
31 to provide participants greater control of needed services and
32 supports with an individual budget. The methodology for
33 determining individual budgets shall include, but shall not be
34 limited to:

35 (1) Limit a participant’s individual budget to 90 percent of his
36 or her portion of the SDS Program annual appropriation and be
37 based on historic annual purchase of service costs for consumers
38 with similar characteristics and circumstances at the regional
39 center establishing the participant’s individual program plan.
40 For purposes of this section, “characteristics and

1 *circumstances” shall include, but not be limited to, service and*
2 *support needs, age and level of ability or disability, living*
3 *situation, day supports, availability of family or other natural*
4 *supports, and whether the individual is in transition.*

5 *(2) Provide that 5 percent of the overall annual appropriation*
6 *for the SDS Program shall be allocated to a risk pool*
7 *participants’ unanticipated needs as described in subdivision (n).*

8 *(3) Provide that 5 percent of the overall annual appropriation*
9 *for the SDS Program shall be reflected as savings to the state.*

10 *(d) The State Department of Developmental Services may*
11 *advance funds to a financial management services entity*
12 *pursuant to SDS Program regulations to facilitate development*
13 *of a participant’s individual budget and transition into the SDS*
14 *Program.*

15 *(e) The Self-Directed Services Program shall include, but not*
16 *be limited to, the following eligibility requisites:*

17 *(1) A participant shall be three years of age or older.*

18 *(2) A participant receiving services in a licensed residential*
19 *services facility or other congregate setting shall make*
20 *satisfactory arrangements for voluntary discharge from such*
21 *living arrangements upon enrollment and prior to participation*
22 *in the SDS Program.*

23 *(3) A participant shall have a developmental disability as*
24 *defined in Section 4512.*

25 *(4) Upon a determination by the individual program plan*
26 *planning team that the SDS Program is an appropriate service*
27 *delivery model for meeting the individual’s needs, a participant*
28 *shall accept all of the following terms and conditions:*

29 *(A) The participant shall undergo an in-depth orientation to*
30 *the SDS Program prior to enrollment.*

31 *(B) The participant shall agree to utilize the services and*
32 *supports available within the SDS Program only when generic*
33 *services are not available, and except for Medi-Cal state plan*
34 *benefits when applicable.*

35 *(C) A participant who is not Medi-Cal eligible may participate*
36 *in the SDS Program without IPSD Waiver Program enrollment*
37 *and receive self-directed services if all other IPSD Waiver*
38 *Program eligibility requirements are met.*

39 *(D) A participant shall consent to use only services necessary*
40 *to implement his or her individual program plan and described*

1 *in the IPSD Waiver Program, and as defined in paragraph (6) of*
2 *subdivision (b), as an available service in the SDS Program, and*
3 *shall agree to comply with any and all other terms and*
4 *conditions for participation in the SDS Program described in this*
5 *section.*

6 *(E) The participant shall accept and manage self-directed*
7 *services within the individual budget amount that has been*
8 *established by the individual program plan planning team, and*
9 *described in the individual's individual program plan.*

10 *(F) The individual budget amount shall be calculated no more*
11 *than once in a 12-month period.*

12 *(G) The participant shall utilize the services of a financial*
13 *management services entity for the purposes of payroll,*
14 *disbursement of funds, and related duties pursuant to the*
15 *participant's approval. A financial management services*
16 *provider may either be hired or designated by the participant. A*
17 *designated financial management services provider shall*
18 *perform services on a non-paid basis. An individual or a parent*
19 *of an individual in the SDS Program shall provide financial*
20 *management services only as a designated provider and only if*
21 *the capacity to fulfill the roles and responsibilities as described*
22 *in the financial management services provider qualifications can*
23 *be demonstrated to the regional center.*

24 *(H) The participant shall utilize the services of a supports*
25 *broker for the purpose of providing services and functions as*
26 *described in paragraphs (2) and (3) of subdivision (b). A*
27 *supports broker may either be hired or designated by the*
28 *participant. A designated supports broker shall perform support*
29 *brokerage services on a non-paid basis. An individual or a*
30 *parent of an individual in the SDS Program shall provide*
31 *supports brokerage services or his or her designated*
32 *representative shall provide the services only as a designated*
33 *provider and only if the capacity to fulfill the role and*
34 *responsibilities as described in the supports broker provider*
35 *qualifications can be demonstrated to the financial management*
36 *services entity.*

37 *(5) The participant shall implement his or her individual*
38 *program plan. An adult may designate an authorized*
39 *representative to effect the implementation. The representative*
40 *shall meet all of the following requirements:*

1 (A) He or she shall demonstrate knowledge and understanding
2 of the participant's needs and preferences.

3 (B) He or she shall be willing and able to comply with SDS
4 Program requirements.

5 (C) He or she shall be at least 18 years of age.

6 (D) He or she shall be approved by the participant to act in
7 the capacity of a representative.

8 (f) If at any time during participation in the SDS Program a
9 regional center determines that an individual is no longer
10 eligible to continue based on the criteria described in subdivision
11 (e), the regional center shall inform the participant of his or her
12 ineligibility and shall provide for the participant's transition
13 from the SDS Program to other services and supports. This shall
14 include the development of a new individual program plan that
15 reflects the services and supports necessary to meet the
16 individual's needs. Upon determination of ineligibility pursuant
17 to this subdivision, the participant shall be sent written notice of
18 the fair hearing rights, as required by Section 4701. The regional
19 center shall ensure that there is no gap in services and supports
20 during the transition period.

21 (g) An individual determined ineligible as described in
22 subdivision (f), or who voluntarily exits the SDS Program, shall
23 be permitted to return to the SDS Program upon meeting all
24 applicable eligibility criteria and after a minimum of 12 months
25 time has elapsed.

26 (h) Applicants for, or participants in, the SDS Program shall
27 have all the rights established in Chapter 7 (commencing with
28 Section 4700).

29 (i) Only a financial management services provider is required
30 to apply for vendorization in accordance with Subchapter 2
31 (commencing with Section 54300) of Chapter 3 of Title 17 of the
32 California Code of Regulations, for the SDS Program. All other
33 service providers shall have applicable state licenses,
34 certifications, or other state required documentation, but are
35 exempt from the vendorization requirements set forth in Title 17
36 of the California Code of Regulations. The financial management
37 services entity shall ensure and document that all service
38 providers are qualified for any service that may be delivered to
39 any participant in the SDS Program and that all requirements

1 *described in the IPSD Waiver Program related to service*
2 *providers are met.*

3 *(j) Participants in the SDS Program may request, at no charge*
4 *to the participant, criminal history background checks for*
5 *persons seeking employment as a service provider and providing*
6 *direct care services to the individual.*

7 *(1) Criminal history records checks pursuant to this*
8 *subdivision shall be performed and administered as described in*
9 *subdivision (b) and subdivisions (d) to (h), inclusive, of Section*
10 *4689.2, and Sections 4689.4 to 4689.6, inclusive, and apply to*
11 *vendorization of providers and hiring of employees to provide*
12 *services for family home agencies and family homes.*

13 *(2) The State Department of Developmental Services may*
14 *enter into a written agreement with the Department of Justice to*
15 *implement this subdivision.*

16 *(k) Participants enrolled in the SDS Program pursuant to this*
17 *section and utilizing an individual budget for services and*
18 *supports are exempt from Section 4783 and from the Family Cost*
19 *Participation Program.*

20 *(l) The State Department of Developmental Services may*
21 *develop, revise, and maintain regulations implementing the*
22 *requirements of this section. The adoption of any emergency*
23 *regulations to implement this section that are filed with the*
24 *Office of Administrative Law on or before January 1, 2007, shall*
25 *be deemed to be an emergency and necessary for the immediate*
26 *preservation of the public peace, health and safety, or general*
27 *welfare.*

28 *(m) Notwithstanding any provision of law, an individual*
29 *receiving services and supports pursuant to Section 4685.5 may*
30 *elect to either participate in the SDS Program or continue to*
31 *receive self-directed services within his or her current scope and*
32 *existing procedures and parameters. Selection of continued*
33 *receipt of self-directed services within current scope and existing*
34 *procedures and parameters shall cease effectiveness upon a*
35 *participant's voluntary election and qualification to receive*
36 *services under another delivery system. Individuals no longer*
37 *receiving services pursuant to this subdivision after June 30,*
38 *2009, shall be enrolled in another service delivery system.*

39 *(n) Participants shall be included in the SDS risk pool. The*
40 *risk pool shall be allocated by the State Department of*

1 *Developmental Services to the regional centers through a*
2 *process specified by the State Department of Developmental*
3 *Services. Funds in the risk pool may be accessed more than once*
4 *in a lifetime by a participant and shall be used only in the event*
5 *of substantial change in the individual's service and support*
6 *needs that were unanticipated at the time the individual budget*
7 *was set; or relocation of individual residence; or catastrophic*
8 *injury or illness.*

9 *(o) Each regional center shall be responsible for implementing*
10 *an SDS Program.*

11 *(p) If a federal waiver is not forthcoming for the establishment*
12 *of the SDS Program, the SDS Program shall be implemented as*
13 *a state only program.*

14 ~~SECTION 1. Section 4685.5 of the Welfare and Institutions~~
15 ~~Code is amended to read:~~

16 ~~4685.5. (a) Notwithstanding any other provision of law,~~
17 ~~commencing January 1, 1999, the department shall conduct a~~
18 ~~pilot project under which funds shall be allocated for local~~
19 ~~self-determination pilot programs that will enhance the ability of~~
20 ~~a consumer and his or her family to control the decisions and~~
21 ~~resources required to meet all or some of the objectives in his or~~
22 ~~her individual program plan.~~

23 ~~(b) Local self-determination pilot programs funded pursuant to~~
24 ~~this section may include, but not be limited to, all of the~~
25 ~~following:~~

26 ~~(1) Programs that provide for consumer and family control~~
27 ~~over which services best meet their needs and the objectives in~~
28 ~~the individual program plan.~~

29 ~~(2) Programs that provide allowances or subsidies to~~
30 ~~consumers and their families.~~

31 ~~(3) Programs providing for the use of debit cards.~~

32 ~~(4) Programs that provide for the utilization of parent vendors,~~
33 ~~direct pay options, individual budgets for the procurement of~~
34 ~~services and supports, alternative case management, and~~
35 ~~vouchers.~~

36 ~~(5) Wraparound programs.~~

37 ~~(e)~~

38 ~~Funds allocated to implement this section may be used for~~
39 ~~administrative and evaluation costs. Purchase of services costs~~
40 ~~shall be based on the estimated annual service costs associated~~

1 with each participating consumer and family. Each proposal shall
2 include a budget outlining administrative, service, and evaluation
3 components.

4 (d) Pilot projects shall be conducted in the following regional
5 center catchment areas:

6 (1) ~~Tri-Counties Regional Center.~~

7 (2) ~~Eastern Los Angeles Regional Center.~~

8 (3) ~~Redwood Coast Regional Center.~~

9 (4) ~~Kern Regional Center.~~

10 (5) ~~San Diego Regional Center.~~

11 (e) ~~Each pilot operating area receiving funding under this~~
12 ~~section shall demonstrate joint regional center and area board~~
13 ~~support for the local self-determination pilot program, and shall~~
14 ~~establish a local advisory committee, appointed jointly by the~~
15 ~~regional center and area board, made up of consumers, family~~
16 ~~members, advocates, and community leaders and that shall~~
17 ~~reflect the multicultural diversity and geographic profile of the~~
18 ~~catchment area. The local advisory committee shall review the~~
19 ~~development and ongoing progress of the local~~
20 ~~self-determination pilot program and may make ongoing~~
21 ~~recommendations for improvement to the regional center.~~

22 (f) ~~Expansion of the self-determination projects within the 21~~
23 ~~regional center catchment areas shall be consistent with a federal~~
24 ~~waiver to the state's Medicaid plan that provides for federal~~
25 ~~financial participation for services and supports delivered~~
26 ~~through a self-determination project.~~

27 (g) ~~Notwithstanding subdivision (f), if the federal waivers are~~
28 ~~not forthcoming for expansion of the project, the department~~
29 ~~shall permit the continuation of the existing pilot project in the~~
30 ~~five regional center catchment areas under those waivers, and~~
31 ~~shall expand the project to other regional center catchment areas~~
32 ~~as a state-only program if the project meets criteria established~~
33 ~~by the department and demonstrates purchase of services~~
34 ~~expenditures are not increased in the aggregate as a result of~~
35 ~~participation in the project.~~